

ISSUE DATE: May 5, 2000

DOCKET NO. P-421/C-00-373

NOTICE AND ORDER FOR HEARING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott  
Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
LeRoy Koppendrayner

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Complaint by Dakota  
Telecom, Inc. Against U S WEST  
Communications, Inc. for Violation of an  
Approved Interconnection Agreement  
Requesting Expedited Proceeding and  
Temporary Relief

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**PROCEDURAL HISTORY**

On March 29, 2000, Dakota Telecom, Inc. (DTI), a wholly owned subsidiary of McLeodUSA Incorporated, filed a Complaint alleging that US WEST Communications, Inc. (USWC) violated its interconnection agreement with DTI by not completing calls to and from the exchanges that have Extended Area Service (EAS) with Pipestone, Marshall, and Luverne. DTI requested an expedited proceeding, pursuant to Minn. Stat. § 237.462, subd. 6, to resolve its Complaint. In addition, DTI sought temporary relief pursuant to Minn. Stat. § 237.462, subd. 7, a Commission order requiring USWC to terminate EAS calls within the entire local calling area of Marshall, Pipestone, and Luverne.

On April 13, USWC filed its answer, denying each and every allegation of DTI and opposing DTI's requests for an expedited proceeding and temporary relief. USWC also asked that the Commission dismiss the Complaint and award USWC any further relief that the Commission deemed just and proper.

The Commission met to consider this matter on April 18, 2000.

**FINDINGS AND CONCLUSIONS**

**I. Jurisdiction and Referral for Contested Case Proceedings**

The Commission has general jurisdiction over U S WEST Communications, Inc. under Minn. Stat. § 237.02.

Under its rules of practice and procedure, the Commission initiates contested case proceedings when there are contested material facts and a legal right to a hearing or when the Commission finds that all significant issues in a case have not been resolved to its satisfaction. Minn. Rules 7829.1000. Here, it is not clear whether there are contested material facts, but it is clear that the Commission cannot resolve all significant issues without formal evidentiary development.

The Commission finds that it cannot determine, on the basis of the record before it, which company (DTI or USWC) is required to defray the expense of network changes necessary to provide DTI with parity EAS service in the Luverne, Marshall, and Pipestone exchanges. Nor can the Commission determine what compensation DTI should pay USWC for carrying EAS traffic to DTI customers in the Luverne, Marshall, and Pipestone exchanges.

The Commission will therefore refer the case to the Office of Administrative Hearings for contested case proceedings.

## **II. Issues to be Addressed**

In a companion Order in this matter<sup>1</sup>, the Commission granted DTI temporary relief on its Complaint, ordering the installation of facilities and services necessary to provide DTI with a local calling area including EAS for Luverne, Marshall, and Pipestone.<sup>2</sup> In that Order, the Commission also deferred the related cost responsibility issues for determination after a contested case hearing and receipt and review of the ALJ's recommendations.

The issues specifically referred for contested case development are:

1. Which company should defray the expense of network changes (switch translations and equipment ) at USWC's Marshall and Windom end-offices necessary to provide DTI with parity EAS service in the Luverne, Marshall, and Pipestone exchanges.
2. What on-going remuneration mechanism should DTI use to compensate USWC for carrying EAS traffic to and from DTI's customers in the Luverne, Marshall, and Pipestone exchanges, e.g. termination charges, tandem switching and transport fees, etc.
3. Any other outstanding disputed issues between DTI and USWC related to DTI's Complaint.

The parties shall address these issues in the contested case proceeding.

## **III. Procedural Outline**

### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Richard C. Luis. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700,

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<sup>1</sup> See ORDER GRANTING TEMPORARY RELIEF AND REFERRING FOR CONTESTED CASE HEARING, Docket No. P-421/C-00-373 (May \_\_\_\_, 2000).

<sup>2</sup> Note: DTI has agreed to pay the cost of trunking from DTI to the Windom exchange. DTI and USWC have also agreed that the requested functionality can be achieved without trunking between DTI and the exchanges that have EAS to the Luverne, Marshall, and Pipestone exchanges.

100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2542.

**B. Hearing Procedure**

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200. Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; (612) 297-3000.

Under these rules parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing. Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions. They should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Karen Hammel, Assistant Attorney General, 900 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (612) 297-1852.

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

**C. Intervention**

Current parties to this case are the Complainant DTI, the Respondent USWC, and the Minnesota Department of Commerce (the Department).

Other persons wishing to become formal parties to this case shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

**D. Prehearing Conference**

A prehearing conference will be held in this case on Monday, May 22, 2000 at 9:00 a.m. in the Large Hearing Room, Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101. Persons participating in the prehearing conference should be

prepared to discuss time frames, scheduling, discovery procedures, and similar issues.

#### **IV. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to cases involving ratesetting. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Minnesota Campaign Finance and Public Disclosure Board, telephone number (612) 296-1720, with any questions.

#### **V. Ex Parte Communications**

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

### **ORDER**

1. A contested case proceeding shall be held on this matter, as set forth above.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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calling (612) 297-4596 (voice), (612) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
Suite 1700  
100 Washington Square  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
Suite 350  
121 Seventh Place East  
St. Paul, Minnesota 55101-2147

In the Matter of a Complaint by Dakota  
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MPUC Docket No. P-421/C-00-373

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address, and Telephone Number of Administrative Law Judge:

Richard C. Luis, Office of Administrative Hearings, Suite 1700, 100 Washington Square,  
Minneapolis, Minnesota 55401-2138; (612) 349-2542.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_